

ORDINANCE NO. O-05-142

AN ORDINANCE TO PROVIDE FOR THE ENFORCEMENT AND COLLECTION OF TAXES LEVIED BY THE CITY UPON THE GROSS RECEIPTS OR GROSS PROCEEDS DERIVED FROM RENTING, LEASING, OR OTHERWISE FURNISHING HOTEL, MOTEL, OR SHORT TERM CONDOMINIUM RENTAL ACCOMMODATIONS FOR SLEEPING, MEETING, OR PARTY ROOM FACILITIES FOR PROFIT IN THE CITY AND UPON THE GROSS RECEIPTS OR GROSS PROCEEDS RECEIVED BY RESTAURANTS, CAFES, CAFETERIAS, DELICATESSENS, DRIVE-IN RESTAURANTS, CARRY-OUT RESTAURANTS, CONCESSIONS STANDS, CONVENIENCE STORES, GROCERY STORE – RESTAURANTS, AND SIMILAR BUSINESSES FROM THE SALE OF PREPARED FOOD AND BEVERAGES FROM ON OR OFF PREMISES CONSUMPTION, PRESCRIBING OTHER MATTERS PERTAINING THERETO AND DECLARING AN EMERGENCY;

WHEREAS, pursuant to Act 185 of 1965, and as subsequently amended, the City of Conway (the "City") has adopted ordinances levying taxes upon the gross receipts from the renting, leasing, or otherwise furnishing of hotel, motel, or short term rental accommodations for sleeping, meeting, or party room for profit in the City and upon the gross receipts of restaurant, cafes, cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, grocery store restaurants and similar businesses as defined by the levying ordinance from the sale of prepared food for consumption on and off the premises of such establishment in the City and providing for other matters; and

WHEREAS, the City desires to establish procedures for the collection and enforcement of said taxes that have been levied and administered by the City with the adoption of Ordinance No. O-00-01, Ordinance O-05-97, Ordinance No. O-05-98, and Ordinance No. O-05-131 pursuant to Act 185 of 1965, and as subsequently amended.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS:

SECTION 1: Title, Purpose

- a) This Ordinance shall be known and may be cited as the City of Conway A& P Gross Receipts Tax Collection and Enforcement Ordinance.
- b) The purpose of this Ordinance is to provide the procedures for the enforcement and collection of the taxes levied and administered by the City with the adoption of Ordinance No. O-00-01, Ordinance O-05-97, Ordinance No. O-05-98, and Ordinance No. O-05-131 pursuant to Act 185 of 1965, and as subsequently amended.

SECTION 2: Applications of ordinances and construction with other laws.

The provisions of this ordinance shall be cumulative to the Arkansas Gross Receipts Acts of 1941, A.C.A. §26-52-101 et. seq. and the Arkansas Tax Procedure Act, §26-18-101, et. seq., the

provisions of which so far as is practicable, shall be deemed incorporated herein as applicable with respect to the enforcement and collection of the A&P tax.

SECTION 3: Definitions

The following word, and phrases, except where the context clearly indicates the application of different meaning, when used in this ordinance shall have the following meanings:

- a) "A&P Tax" means the gross receipts tax levied by the City pursuant to Act 185 of 1965 and as subsequently amended.
- b) "Assessment" means a tax is assessed when it is recorded as the liability of a taxpayer on the Commission's records. The assessment becomes a first assessment following the decision of the Commission or a hearing officer, if the assessment is protested.
- c) "Business Agent" means the designated agent of the Commission in charge of its books, accounts, and financial affairs and is authorized to act on behalf of the Commission in the performance of its duties.
- d) "Business Entity" means a corporation, associated partnership , joint venture, limited liability company, limited liability partnership trust or other legal business entity.
- e) "Commission" means the City Advertising and Promotion Commission of Conway, Arkansas and any representative designated by the Commission to perform any function hereunder.
- f) "Commission Offices" means the address and offices designated by the Commission as its official place of business.
- g) "City" means the City Conway, Arkansas
- h) "Delinquency date" means the A&P Tax is delinquent and subject to penalty on the first day of the month following the month it was due.
- i) "Due date" means the A&P tax is due and payable on the first day of each calendar month following the month the tax is imposed on gross receipts.
- j) "Discount Date" means the date by which early payment of the A & P tax would allow to the taxpayer a discount, spelled out by provisions herein, off the full remittance of the tax for the month.
- k) "Person" means any natural person, firm, corporation or other Business Entity.
- l) "Taxpayer" means any person liable to remit the A&P Tax.

SECTION 4: Administration and Regulations.

The administration of this ordinance is vested in the Commission and the Commission shall promulgate rules and regulations and prescribe all forms as are necessary or required for the enforcement and collection of the A&P tax.

SECTION 5: Permits

- a) It shall be unlawful for any person to transact in the City a business which is subject to the A&P tax prior to the issuance and receipt of an A&P Tax Permit from the Commission.
- b) A separate A&P tax permit must be obtained from the Commission for each location whereat the person conducts a business which is subject to the A&P tax.
- c) An A&P Tax Permit shall have no stated terms.

SECTION 6: Application for Permit.

Any person transacting in the City a business which is subject to the A&P tax shall file with the Commission an application for an A&P Tax Permit to conduct that business, the form and contents of which applications shall be as prescribed by the Commission from time to time.

SECTION 7: Permits not assignable, display required and expiration.

- a) The A&P tax permit shall not assignable and shall be valid only for the person in whose name it is issued and for the location thereon designated.
- b) The A&P tax permit shall at all times be conspicuously displayed at the location thereon assigned.
- c) The A&P tax permit shall expire at the time of cessation of the business of the taxpayer at the location designated thereon.
- d) It shall be unlawful for any person subject to the A&P tax to transact business within the City when their A&P tax permit is expired.

SECTION 8: Discontinuance of business-unpaid taxes.

- a) (1) Any taxpayer operating under an A&P tax permit, upon discontinuance of the business at the location thereon, shall return the A&P tax permit to the Commission for cancellation together with remittance of any unpaid and accrued A&P taxes
- (2) Failure to surrender the A&.P Tax Permit and pay any and all accrued A&P Taxes shall be sufficient cause for the Commission to refuse the issuance of any A&P Tax Permit in the future to the Taxpayer.
- (3) In the case of the sale of any business which is subject to the A&P Tax, the

A&P Tax shall be deemed to be due and payable at the time of the sale of fixtures and equipment incident to the business and shall constitute a lien against the said fixtures and equipment in the hands of the purchaser of the business until all A&P taxes have been paid.

SECTION 9: Revocation or suspension – Renewal

- a) Whenever a person to whom an A&P Tax Permit has been issued fails to comply with any provision of this ordinance, including any rule or regulation prescribed by the Commission from time to time, the Commission shall give notice to the person of an intention to revoke the A&P Permit.
- b) (1) The person may, within ten (10) consecutive days after receipt of the Notice of Intent to Revoke the A&P Tax Permit, apply to the Commission for a hearing

(2) The hearing shall be conducted at a time and place to be designated by the Commission before such person as is designated by the Commission to conduct such hearing and the

Taxpayer shall be entitled to introduce testimony and be represented by counsel, and the designated representative of the Commission shall determine at the hearing whether the taxpayer A&P Tax Permit should be revoked.

(3) Failure of the person to appear at the hearing shall be grounds for the Commission, acting through its designated representative, to revoke the Taxpayers A&P Tax Permit.

- c) The person shall be entitled, within thirty (30) consecutive days from the date of the revocation of the Taxpayer's A&P Tax Permit , to appeal to the Circuit Court of Faulkner, County, Arkansas, where the action shall be tried de novo.
- d) It shall be unlawful any person subject to the A&P Tax to transact business within the City when their A&P is revoked or suspended.
- e) Any revoked or suspended permit may be renewed upon the filing of proper returns and the payment of all A&P taxes due or removal of any other cause of revocation or suspension.

SECTION 10: Preparation of returns – Payments of A&P Tax

- a) The A&P Tax shall be due and payable as the first day of each calendar month by the person liable for the payment of the A&P Tax (taxpayer) and shall be deemed delinquent if not paid on the first day of the next calendar month.
- b) (1) It shall be the duty of the taxpayers on or before the Discount Date or twentieth day of each calendar month to deliver to the Commission, upon forms prescribed and furnished by the Commission, returns under oath showing the total combined gross receipts or gross proceeds which are subject to the A&P tax for the preceding calendar month and the amount of tax due. The tax due shall be remitted with the return.

- c) If not paid on or before the Discount Date or the twentieth (20th) day of the calendar month, the full amount of the A&P tax shall be due from that date; provided, however, no penalty for delinquency shall be assessed if payment thereof is made on or before the Delinquency Date or the first day of the calendar month next following.

SECTION 11: Discount for prompt payment.

- a) If the return is delivered on or before the Discount Date or the twentieth (20th) day of the calendar month following the month the tax is imposed on gross receipts, the taxpayer may remit therewith to the Commission ninety-eight percent (98%) of the A&P Tax due on or before the Discount Date. A return is “delivered” on the date it is postmarked if it is delivered by the U.S. Postal Service.
- b) Failure of the taxpayer to remit the A&P tax on or before the Discount Date shall cause the taxpayer to forfeit his claim to the discount and the taxpayer must remit to the Commission one hundred percent (100% of the amount of the A&P tax due, plus any penalty and interest accrued thereon.

SECTION 12: Additional penalties and tax.

If the taxpayer fails to comply with certain provisions of this ordinance, then the following penalties and additions to the tax shall be applicable:

- a) In the case of the taxpayer’s failure to file the A&P tax return and pay the tax due on or before the delinquency date, determined with regard to any extension of time for filing thereof, unless it is shown that the failure is due to reasonable cause and not to willful neglect, there shall be added to the amount required to be shown as tax on A&P tax return five percent (5%) of the A&P tax if the failure is not more than (1) one month past the delinquency date, with an additional five percent (5%) for each additional month or fraction thereof during which the failure continues, not to exceed thirty-five percent (35%) in the aggregate.
- b) In addition to any penalty assessed hereunder, simple interest on any paid A & P tax shall be assessed at the rate of ten percent (10%) per annum from the Delinquency Date.

SECTION 13: Examinations and investigations.

- a) In the administration of this ordinance, the Commission or its designated representatives, for the purpose of determining the accuracy of a return or fixing any liability hereunder, may make an examination or investigation of the place of business, the tangible personal property, equipment, facilities, and the books, records, papers, vouchers, accounts, and documents of any Taxpayer or other person. Every Taxpayer or other person and his agents and employees shall exhibit to the Commission or its designated representative these places and items and facilitate any examination or investigation.

- b) No taxpayer shall be subjected to unnecessary examination or investigations and only one (1) inspection of Taxpayer's book of accounts shall be made for each taxable year unless the Taxpayer requests otherwise or unless the Commission, after investigation, notifies the Taxpayer in writing that an additional inspection is necessary.
- c) (1) When conducting investigation or an audit of any Taxpayer, the Commission or its designated representative may, in its discretion, examine the records and files of any person, except where privileged by law, any other business, institution, financial institution, the record of any state agency, agency of the United States Government or agency of any other state where permitted by agreement or reciprocity.
- (2) The Commission or its designated representative may compel production of these records by summons. A summons may be served directly by the Commission or its designated representatives.
- d) In the administration of this Ordinance, the Commission, its Executive Director, or its designated representatives may:
- (1) Administer oaths, conduct hearings, and compel by summons the attendance of witness testimony, and the production of any books, records, papers, or other data of any person or Taxpayer, or
- (2) (A) Examine under oath any person regarding the business of any taxpayer concerning any matter incident to the administration of this ordinance.
- (B) The fees of witnesses required by the Commission, its Executive Director, or its designated representatives to attend any hearing shall be the same as those allowed to the witness appearing before circuit courts of this state. The fees shall be paid in the manner provided for the payment of other expenses incident to the administration hereof.
- e) (1) the investigation may extend to any person that the Commission or its designated representatives determines has access to information which may be relevant to the examination or investigation.
- (2) When any summons requiring the production of records as described in subsection (c) of this section is served on a third-party record keeper, written notice of the summons shall be mailed to the Taxpayer that his records are being summoned, at least fourteen (14) days prior to the date fixed in the summons as the day for the examination of the records.
- (3) Notice to the taxpayers required by this section is sufficient if it is mailed by certified mail to the last address of record with the Commission.
- f) (1) When the Commission or its designated representatives have the power to issue a summons for its own investigative or auditing purposes, then the Commission shall honor any reasonable request by the taxpayer to issue a summons on the jurisdiction in Faulkner County, Arkansas for an order compelling the production of the summoned records.

(2) Failure to comply with the order of the court for the production of records may be punished by the court as for contempt.

- g) (1) the cost of producing records of a third party required by a summons shall be borne by the Taxpayer if he requests the summons to be issued.

(2) If the Commission or its designated representatives initiate the summons for third-party records, the Commission shall bear the reasonable cost of producing the records. The Commission or its designated representatives may later assess the cost against any delinquent or deficient taxpayer as determined by the records.

Section 14: Time limitations for assessments, collection, refunds and prosecution

- a) Except as otherwise provided in this Ordinance, no assessment of the A&P Tax shall be made after the expiration of three (3) years from the date the return was required to be filed or the date the return was filed, whichever period expired later. The Commission shall not begin court proceedings after the expiration of the three - year period unless there has been a previous assessment for the collection of the tax.
- b) Upon written agreement of the Commission and the Taxpayer, the time within which the Commission may make a final assessment, as provided herein, may be extended to a date mutually agreed upon in the written agreement.
- c) Where, before the expiration of the time prescribed for the assessment of the tax or of the extensions thereof, both the Commission and the Taxpayer have consented in writing to an assessment after that time, the A&P Tax may be assessed at any time prior to the expiration of the time agreed upon.
- d) In the case of a fraudulent return or failure to file a report or return required hereunder, the Commission may compute, determine, and assess the estimated amount of A&P Tax due from any information in its possession or may begin an action in court for the collection of the tax without assessment, at any time.
- e) Whenever a taxpayer requests an extension of time for filing any return required hereunder, the limitation of time for assessing any tax shall be extended for a like period.
- f) Where the assessment of the A&P Tax has been made within the period of limitation properly applicable thereto, the A&P Tax may be collected by levy or proceedings in court, but only if the levy is made or the proceeding is begun within ten (10) years after the date of the assessment of the tax.
- g) No person shall be prosecuted, tried, or punished for any of the various criminal offenses arising under the provisions of this Ordinance unless the indictment of the Taxpayer is instituted within six (6) years after the commission of the offense.

SECTION 15: Notice requirements.

- a) (1) The Commission shall give a Taxpayer notice of any assessment, demand, decision or hearing before the Commission or its designated representative which directly involves that Taxpayer.

(2) All notices required to be given by the Commission to a Taxpayer shall be either served by personal service or sent by mail to the taxpayer's last address on record with the Commission. If this mail is returned, unclaimed or refused, then proper notice shall have been served and given, and the Commission may take any action permitted by this Ordinance or otherwise by law.

(3) All notices of final assessment hereunder shall be sent by certified mail, return receipt requested.
- b) The Taxpayer, when giving notice to the Commission shall give notice either by mail or by personal service on the Commission. The notice the Taxpayer gives shall be effective when postmarked or, in the case of personal service, when so served.
- c) The Commission and any Taxpayer may, by written agreement, provide for any other reasonable means of giving notice.
- d) All notice shall be in writing.

SECTION 16: Assessment and collection of taxes generally.

- a) (1) The Commission or its designated representatives are authorized and required to make the inquiries, determinations, and assessments of the A&P Tax, including interest, additions to taxes and assessable penalties, imposed hereby.

(2) The assessment shall be made by recording the liability of the Taxpayer in the offices of the Commission in accordance with rules or regulation prescribed by the Commission.

(3) Upon request of the Taxpayer, the Commission shall furnish the Taxpayer a copy of the record of the assessment.
- b) (1) The Commission shall collect all A&P taxes imposed by law.

(2) As soon as practicable after the making of assessment of the A&P Tax, the Commission shall give notice to each person liable for the unpaid tax, stating the amount and demanding payment within ten (10) days.

(3) Upon receipt of notice and demand from the Commission, the person liable for the tax shall pay the stated amount including any interest, additions to tax, and assessable penalties at the place and time stated in the notice and demand.

Section 17: Proposed assessments.

- a) (1) If any Taxpayer fails to file any return as required hereunder, the Commission from any information in its possession or obtainable by it, may determine the correct amount of tax for the taxable period. If a return has been filed, the Commission or its designated representative shall examine the return and make any audit or investigation that is considered necessary.

(2) When no return has been filed and the Commission determines that there is an A&P tax due for the taxable period or when a return has been filed and the commission determines that the A&P tax disclosed by the return is less than the tax disclosed by its examination, the Commission shall propose the assessment of additional tax plus penalties, as the case may be, and shall give notice of the proposed assessment to the Taxpayer. The notice shall explain the basis of the proposed assessment and shall state the final assessment, as provided herein, will be made if the Taxpayer does not protest the proposed assessment as provided hereby. The Taxpayer does not have to protest the proposed assessment to later be entitled to exercise the right to seek a judicial review of the assessment.

- b) Any demand for additional payment of the A&P Tax which is made as the result of a verification of a mathematical error on the return shall not be deemed to be a proposed assessment under the provision of this section and shall not be subject to the hearing or appeal provisions of this Section.

SECTION 18: Taxpayer relief

- a) Any Taxpayer who wishes to seek administrative relief from any proposed assessment of taxes or proposed notice of disallowance of a claim for refund by the Commission shall follow the procedure provided by this section.

- b) (1) A Taxpayer may at his option either request the Commission to consider his request for relief solely upon written documents furnished by the taxpayer or upon the written documents and any evidence produced by the taxpayer at a hearing.

(2) A Taxpayer who requests the Commission to render its decision based on written documents is not entitled by law to any other administrative hearing prior to the Commission's rendering of its decision and, if necessary, the issuing of a final assessment and demand for payment or issuing of a certificate of indebtedness.

- c) Within thirty (30) days after service of notice of the proposed assessment, the Taxpayer may file with the Commission a written protest under oath, signed by himself or his authorized agent, setting forth the taxpayer's reasons for opposing the proposed assessment.
- d) The Commission may, in its discretion extend the time for filing a protest for any period of time not to exceed an additional ninety-day period.

SECTION 19: Hearing on proposed assessments.

- a)(1) The Commission's Business Agent or other designated representative shall serve as a hearing officer to review all written protests submitted by taxpayers, hold all hearings, and make written findings as to the applicability of proposed assessments.
- (2) Decisions of the hearing officer shall be final unless revised by the Commission.
- (3) The hearing on written and oral protests and determinations made by the hearing officer shall not be subject to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.
- b) The actual hearing of the written protest shall be held in the Commission's Offices or other location set forth in the notice thereof to the Taxpayer.
- c) (1) The hearing officer shall set the time and place for bearing on the written protest; and shall give the taxpayer reasonable notice thereof.
- (2) At the hearing the taxpayer may be represented by an authorized representative and may present evidence in support of his position.
- (3) After the hearing officer shall render his decision in writing and shall serve copies upon both the Taxpayer and the Commission.
- (4) (A) If the proposed assessment is sustained, in whole or part the Taxpayer may request in writing, within twenty (20) days of the mailing of the decision, that the Commission revise the decision of the hearing officer.
- (B) If the Commission refuses to make a revision or if the Taxpayer does not make a request for revision, then a final assessment shall be made upon the determination of the hearing officer or the Commission.
- (C) A Taxpayer may seek relief from the final decision of the hearing officer or the Commission on a final assessment of a tax deficiency by following the procedure set forth in Section 20.
- d) (1) In addition to the hearing procedures set out subsections (a)-(c) of this section, the Commission may hold administrative hearings by telephone, video conference, or other electronic means if the Commission or the hearing officer determines that conducting the hearing in such a manner:
- (A) Is in the best interest of the Taxpayer and the Commission;
- (B) Is agreed by both parties;
- (C) Is not fiscally unsound or administratively burdensome; and
- (D) Is in compliance with state law.
- (2) The Commission is authorized to contract with third parties for all services necessary to conduct hearings by telephone, video, or other electronic means.

(3) Any person who enters into a contract with the Commission to provide services necessary to conduct hearings by telephone, video, or other electronic means shall be subject to the laws of the State of Arkansas.

SECTION 20: Judicial Relief

a) Within thirty (30) days after the issuance and service on the taxpayer of the notice and demand for payment of a deficiency in tax established by (1) an audit determination that is not protested by the taxpayer, or (2) a final determination of the hearing officer or the Commission; taxpayer may seek judicial relief from the final determination by either:

(1) Within one (1) year of the date of the final assessment, paying the amount of the A&P tax due, including any interest or penalties, for any taxable period or periods covered by the final assessment and filing suit to recover that amount within one (1) year of the date of payment. The Commission may proceed with collection activities including the filing of a certificate of indebtedness as authorized hereunder, within thirty (30) days of the issuance of the final assessment for any assessed but unpaid A&P Taxes, penalties, or interest owed by the taxpayer for other taxable periods covered by the final assessment, while the suit for refund is being persuaded by taxpayer for other taxable periods covered by the final assessment; or

(2) (A) Within thirty (30) days of the issuance and service on the Taxpayer of the notice and demand for payments, filing with the Commission a bond in double the amount of the tax deficiency due, and by filing suit within (30) days thereafter to stay the effect of the Commission's determination.

(B) The bond shall be subject to the condition that the taxpayer shall file suit within "thirty" (30) days after filing of the bond, shall faithfully and diligently prosecute the suit to a final determination, and shall pay any deficiency found by the court to be due and any court cost assessed against him.

(C) A taxpayer's failure to file suit, diligently prosecute the suit, or pay any tax deficiency and court costs, as required by subsection (a) of this section, shall result in the forfeiture of the bond in the amount of the assessment and assessed court costs.

b) Jurisdiction for a suit to contest a determination of the Commission under this section shall be in the Circuit Court of Faulkner County, where the matter shall be tried de novo.

c) The method provided in this section shall be the sole alternative methods for seeking relief from a written decision of the Commission or hearing officer establishing a deficiency in the A&P Tax. No injunction shall issue to stay proceedings for assessment or collection of any A&P Taxes.

d) In any court proceedings under this section the prevailing party may be awarded a judgment for court cases.

SECTION 21: Issuance of certificate of indebtedness and exception.

- a) (1) (A) If a Taxpayer does not timely and properly pursue his remedies seeking relief from a decision of the Commission or hearing officer and a final assessment is made against the Taxpayer, or if the Taxpayer fails to pay the deficiency assessed upon notice and demand, then the Commission through its authorized representative shall, as soon as practicable thereafter, issue to the circuit clerk of any county of the state in which the Taxpayer's business is located a certificate of indebtedness certifying that the person named therein is indebted to the Commission for the amount of the tax established by the Commission as due.
- (B) If a Taxpayer has a delinquent A&P Tax liability to the Commission of less than one thousand dollars (\$1,000), the Commission or its hearing officer may enter into an agreement with the Taxpayer to allow the Taxpayer to pay the delinquency in installments. The Commission or its hearing office may choose not to issue a certificate of indebtedness during the period of the installment agreement if he determines that it is in the best interest of the Commission.
- (2) The circuit clerk shall enter immediately upon the circuit court judgment docket:
- (A) The name of the delinquent taxpayer;
 - (B) The amount certified as being due
 - (C) The name of the tax; and
 - (D) The date of entry upon the judgment docket.
- (3) (A) the entry of the certificate of indebtedness shall have the same force and effect as the entry of a judgment rendered by the circuit court. This entry shall constitute the Commission lien upon the title of any real and personal property of the taxpayers in the county where the certificate of indebtedness is recorded.
- (B) This lien is in addition to any other lien existing in favor of the Commission to secure payment of taxes, applicable interest, penalties, and costs. The lien is superior to other liens of any type or character attaching to the property after the date of entry of the certificate of indebtedness on the judgment docket. This lien is superior to all claims of unsecured creditors.
- (C) The certificate of indebtedness authorized by this subsection shall continue in force for ten (10) years from the date of recording and shall automatically expire after the ten-year period has run. Actions on the lien on the certificate of indebtedness shall be commenced within ten (10) years after the date of recording of the certificate, and not afterward.
- b) (1) After entry of the certificate, the circuit clerk shall issue a writ of execution directed to the Commission, authorizing the Commission to levy upon and against all real and personal property of the Taxpayer.
- (2) The Commission shall have all remedies and may take all proceedings for the collection of the tax which may be taken for the recovery of a judgment at law.

- (3) The writ shall be issued, served, and executed in the same manner as provided for in the issuance and service of executions rendered by the circuit courts of this state, except the Commission shall act in the place of the county sheriffs.
- (4) The Commission shall have this authority for all liens either presently filed or filed after the passage of this ordinance.
- c) (1) nothing in this chapter shall preclude the Commission from resorting to any other means provided by law for collecting delinquent taxes.
- (2) The issuance of a certificate of indebtedness, entry by the Clerk and levy of execution as provided in this section shall not constitute an election of remedies with respect to the collection of the tax.
- (3) The taxes, fees, interest, and penalties imposed or levied hereby may be collected in the same way as a personal debt of the Taxpayer.
- (4) The Commission may sue to the same effect and extent as for the enforcement of a right of action for debt.
- (5) All provisional remedies available in these actions are available to the Commission in the enforcement of the payment of the A&P Tax.
- d) (1) In addition to the remedies provided in subsections (b) and (c) of this section the Commission may direct the circuit clerk to issue a writ of execution directed to the sheriff of any county authorizing the sheriff to levy upon and against all real and personal property of the Taxpayer. The writ shall be issued, served and executed in the same manner as provided for in the issuance and service of executions rendered by the circuit courts of this state.
- (2) The circuit clerk and sheriffs shall be entitled to receive the same fees provided by law in these matters. These fees shall be collected from the Taxpayer by either the Commission or the sheriff in addition to the tax, penalties, and interest included in the certificate of indebtedness. If the sheriff is unable, after diligent effort to collect the tax, interest, penalties, and costs, the Commission may pay such fees as are properly shown to be due to the clerk and sheriff.
- e) The Commission may contract with persons inside or outside the state to help the Commission collect delinquencies of resident or nonresident Taxpayers.

SECTION 22: Injunction Proceedings

When a return required hereunder has not been filed or does not furnish all the information required by the Commission or when the A&P Taxes imposed by law have not been paid or when any required license or permit has not been secured the Commission may institute any necessary action or proceeding in a court of competent jurisdiction in Faulkner County to enjoin the person or taxpayers from continuing operations until the report or return has been filed, required licenses or permits secured, or taxes paid as required. The injunction shall be issued without a bond being required from the Commission.

SECTION 23: Settlement or compromise of liability controversies.

- a) The Commission may enter into an agreement to compound, settle, or compromise any controversy relating to the A&P Tax when:
 - (1) The controversy is over the amount of tax due; or
 - (2) The inability to pay results from the insolvency of the Taxpayer.
- b) The Commission may waive or remit the interest or penalty, or any portion thereof, ordinarily accruing because of a Taxpayer's failure to pay the A&P Tax within the statutory period allowed for its payment:
 - (1) If the Taxpayer's failure to pay the tax is satisfactorily explained to the Commission; or
 - (2) If the failure results from a mistake by the Taxpayer of either the law or the facts subjecting him to such tax; or
 - (3) If the inability to pay the interest or penalty results from the insolvency or bankruptcy of the Taxpayer.
- c) In settling or compromising any controversy relating to the liability of a person for the A&P Tax for my taxable period, the Commission is authorized to enter into a written closing agreement concerning the liability. When the closing agreement is signed by the Commission, it shall be final and conclusive, and except upon a showing of fraud or misrepresentation of a material fact, no additional assessment or collection shall be made by the Commission, and the Taxpayer shall not institute any judicial proceeding to recover such liabilities as agreed to in the closing agreement.
- d) The Commission shall promulgate rules and regulations establishing guidelines for determining whether a proposed offer of compromise is adequate and acceptable to resolve a tax dispute.

SECTION 24: Release of Property from Lien

- a) Upon written application by any person, the Commission may release any property from the lien imposed by any assessment, order, judgment, or certificate of indebtedness obtained by or from any levy made by it if:
 - (1) Either full payment is made to the Commission of the sum it considers adequate consideration for the release; or
 - (2.) Adequate security deposit is made with the Commission to secure the payment of the debt evidenced by the lien
- b) When the Commission determines that its assessment certificate of indebtedness or judgment is clouding the title of property because of error in the description of

properties or similarity in names, the Commission may issue a release without the payment of any consideration.

- c) The Commission's release shall be given under its seal and filed in the office of the circuit clerk in the county in which the lien is filed, or it shall be recorded in any office which conveyances of real estate may be recorded.

SECTION 25: Violations.

Any person subject to the A&P Tax who is transacting business within the City without a valid A&P Tax Permit shall be guilty of a violation which shall be punishable up to a five hundred dollars (\$500) fine. Each day a person transacts business within the City without a valid A&P permit shall constitute a separate violation.

SECTION 26: Criminal Penalties.

Sanctions for any taxpayer who willfully attempts to evade or defeat the payment of the A&P Tax or who assist any Taxpayer to evade or defeat the payment, or otherwise fails to file a report, fails to pay the tax, or makes a false or fraudulent report, return, statement, claim, application or other instrument required by the Commission in connection with the A&P Tax or makes a false answer to any question from the Commission or its designed representative concerning the A&P Tax, neglects to answer a subpoena to appear and answer questions about records for the A&P Tax, or who acts or fails to act in conformance with the provision of the Arkansas Tax Procedure Act as that Act applies to the A&P Tax, shall be subject to penalties set forth in Ark. Code Ann. § 26-18-101 to 105; 26-10-201 to 212 (Michie Repl. 1997 and Supp. 1999), as they exist on the date of the passage of this ordinance, or as they may be amended by the General Assembly and are in effect on the date of any such violation.

SECTION 27: Severability.

The provisions of this Ordinance are hereby declared to be severable. If any provision shall be held to be invalid or to be inapplicable to any persons or circumstances, such invalidity or inapplicability shall not affect the remainder of the provisions of this ordinance.

SECTION 28: Commencement of Enforcement.

The effective date of this ordinance shall be governed by Section 30, below, and enforcement of this ordinance shall be suspended until November 1, 2005, however all A&P Permits shall be displayed by December 1st, 2005.

SECTION 29: Repealer.

All laws and parts of laws are hereby repealed to the extent of such inconsistency with this ordinance.

SECTION 30: Emergency Clause.

It has been found and it is hereby declared that the City requires the revenues to be derived from the tax levied hereunder to be used by the Commission in the discharge of its duties and

responsibilities to the citizens of this City in accordance with state law and the ordinances adopted by the City from time to time, which duties and responsibilities of the Commission are essential to the continued development of the City and to the welfare of its citizen's. As to this ordinance, therefore, being necessary for the preservation of the public peace, health, and safety, an emergency is declared to exist and this ordinance shall be in effect from and after its passage and approval.

Passed this 17th day of October, 2005

APPROVED:

Mayor Tab Townsell

ATTEST:

Michael O. Garrett, City Clerk-Treasurer